

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

|  |   |                                |
|--|---|--------------------------------|
| KENNETH ZIMMERN, a Harris County             | § |                                |
| Registered Voter; WILLIAM SOMMER, a          | § |                                |
| Harris County Registered Voter; and          | § |                                |
| CAROLINE KANE, a Harris County               | § |                                |
| Registered Voter,                            | § |                                |
|  | § |                                |
| <i>Plaintiffs,</i>                           | § |                                |
|  | § |                                |
| v.   | § | Civil Action No. 4:24-cv-04439 |
|  | § |                                |
| JUDGE LINA HIDALGO, in her official          | § |                                |
| capacity as County Judge for Harris County,  | § |                                |
| Texas; and TENESHIA HUDSPETH, in her         | § |                                |
| official capacity as County Clerk for Harris | § |                                |
| County, Texas,                               | § |                                |
|  | § |                                |
| <i>Defendants.</i>                           | § |                                |
|  | § |                                |

**DEFENDANTS’ RESPONSE IN OPPOSITION TO  
PLAINTIFFS’ MOTION FOR LEAVE TO FILE SUPPLEMENTAL LETTER BRIEF**

Defendants oppose Plaintiffs’ Motion for Leave to File Supplemental Letter Brief, ECF No. 21, because the proposed letter is not responsive to Defendants’ supplemental letter, ECF No. 18, nor is it even relevant to the pending motion to dismiss, ECF No. 8.

At the hearing on Defendants’ motion to dismiss, Plaintiffs asserted that a court order directed at Harris County’s purported collection of information about the time a voter votes could effectively remedy their grievances. Plaintiffs also asserted that Tarrant County does not collect such information. Defendants’ supplemental letter—the filing of which Plaintiffs initially opposed but now do not—responded to those contentions, bringing to the Court’s attention a provision of the Texas Election Code that requires Texas counties to produce and record time-stamps showing when a voter is accepted at a polling place.

Plaintiffs’ proposed letter is not “respons[ive] to the Defendants’ letter.” Pls.’ Mot. for Leave at 1. Plaintiffs’ letter says nothing about the use of time-stamps—either as a general matter or by Tarrant County. Instead, Plaintiffs seek to make a totally new argument. They now assert that the Court can remedy their grievances by ordering Defendants to follow the Texas Secretary of State’s *Election Advisory No. 2024-21*, which requires jurisdictions that use electronic pollbook systems “to use ballot numbering methods that do not involve the use of the electronic pollbook system or peripherals that are directly connected to those systems.”

Plaintiffs have never alleged any connection between “ballot numbering methods” and their purported injuries. Their complaint contains no mention of ballot numbering methods. Neither do the two affidavits attached to their complaint. Neither does their response to the motion to dismiss. The proposed letter is therefore not relevant to the pending motion to dismiss, and leave to file it should be denied. *E.g., Howard v. Hain Celestial Group, Inc.*, No. 22-CV-00527-VC, 2025 WL 416160, at \*1 (N.D. Cal. Feb. 5, 2025) (denying motion for leave to file a notice of supplemental authority because the proposed authority “is not relevant to the Court’s decision”); *Winslow v. Forster & Garbus, LLP*, No. CV 15-2996 (AYS), 2017 WL 6375744, at \*6 (E.D.N.Y. Dec. 13, 2017) (declining to consider supplemental authorities that were irrelevant to pending motions).

Defendants respectfully ask that the Court deny Plaintiffs’ motion for leave to file a supplemental letter brief. A proposed order is attached.

Dated: February 14, 2025

Respectfully submitted,

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MANAGING COUNSEL,

AFFIRMATIVE & SPECIAL LITIGATION DIVISION

*/s/ Edward D. Swidriski III*

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**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 14, 2025, a true and correct copy of the foregoing document and its attachments was electronically filed using the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Edward D. Swidriski III

**EDWARD D. SWIDRISKI III**

Attorney-in-Charge